



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
Regional Directors for CPD
CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

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I. PURPOSE

This notice outlines the basic requirements for using HOME funds for a tenant-based rental assistance (TBRA) program. The Department will also issue a model program that expands upon this notice. The purpose of the model will be to assist State and local participating jurisdictions (PJs) with basic decisions regarding TBRA program design and operation.

The Department has exercised its discretion based on the statute to make the TBRA program, as described in recent regulations and this notice, flexible and responsive to local market conditions and housing needs. The current regulations may not address all the design or operational considerations. As a result, some PJs may wish to structure TBRA programs in a manner that is not entirely consistent with HOME regulations. In some instances, it may be possible to waive certain regulatory requirements, if statutory flexibility exists and the PJ can demonstrate good cause for the request.

II. BACKGROUND

TBRA was first authorized under section 212 of the Cranston-Gonzalez National Affordable Housing Act (NAHA). HUD implemented the basic requirements for using HOME funds for TBRA through publication of interim regulations at 24 CFR Part 92 on December 16, 1991. TBRA programs directly assist individual low-income families by making up the difference between actual housing costs and what a family can afford to pay. Tenants are free to select any standard unit, whether or not it is HOME-assisted.

In October, 1992, the initial TBRA provisions were amended by section 220 of the Housing and Community Development Act (HCDA) of 1992. HCDA made two significant amendments. First, it eliminated the provision that required PJs to use the local Section 8 waiting list to determine who would receive assistance. Instead, PJs were permitted to select tenants in accordance with written tenant selection policies and criteria that provide housing to low and very low-income families and were reasonably related to the Federal preferences. Second, it permitted PJs to administer programs that provide only security deposit assistance, rather than requiring that security deposits only be provided in the context of an ongoing rental assistance program. These statutory revisions have been incorporated by interim rules published in the *Federal Register* on December 22, 1992 and June 23, 1993.

HUD also implemented regulatory changes to provide PJs greater flexibility in administering TBRA programs. Publication of a rule on April 19, 1994 made it possible for a PJ to establish its own payment standard based on local market conditions and a determination of rent reasonableness. The rule further clarified the term "reasonably related to Federal preferences" and permitted a PJ's non-Federal contributions to a TBRA program that is not HOME-funded, other than contributions for administrative costs, to count as match for the

HOME Program. A rule published on July 12, 1995 provided information on using HOME TBRA to assist special needs populations.

On January 26, 1996, the Balanced Budget Downpayment Act, I, suspended the Federal preferences applicable to public housing admissions and the Section 8 voucher and certificate programs for Fiscal Year 1996 (which ended on September 30, 1996). HUD's FY 1997 appropriation act extended this suspension through Fiscal Year 1997, which ends on September 30, 1997. During Fiscal Year 1997, public housing authorities are authorized to establish their own preferences. These local preferences may be established after opportunity for public notice and comment and must be consistent with the jurisdiction's Consolidated Plan. The temporary suspension of the Federal preferences extends to the selection criteria for TBRA programs funded by HOME.

III. SUSPENSION OF FEDERAL PREFERENCES

As described in the previous section of this notice, the Federal preference requirements applicable to HOME-funded TBRA programs have been suspended for the remainder of Fiscal Year 1997. The effect of this suspension is to permit a PJ to establish and provide TBRA based entirely on a locally-established system of written tenant selection criteria that is consistent with its Consolidated Plan. During this time period, the preferences established by the PJ must be consistent with the purposes of providing assistance to very low- and low-income families. However, locally-established preferences will not be required to be reasonably related to the Federal preferences.

For a PJ that is currently administering a TBRA program, the effect of this suspension may be simply to permit it to alter the order in which families on the waiting list are selected, based upon its system of preferences. Alternately, a PJ may wish to fundamentally change its TBRA program by establishing a preference system very different than the one it currently administers. For a PJ that is in the process of designing a TBRA program, this suspension may affect its program design and tenant selection system.

The current suspension is temporary. Legislative action will be necessary to extend the suspension beyond September 30, 1997 or to make it permanent. Before making any changes to an existing or proposed TBRA program, a PJ should consider whether it could easily bring its program back into conformance with the law if the suspension terminates.

This notice assumes that the Federal preference suspension will continue on a provisional basis. However, because the suspension may not be in effect beyond September 30, 1997, it also outlines the requirements that would apply to HOME TBRA programs should the suspension not be extended or made permanent. At the time that this Notice was published, the Congress was considering rescinding the Housing Act of 1937 which contains the Federal preference requirements. Should Congress take such action, it would eliminate the need for the PJ's written

tenant selection criteria to be reasonably related to Federal preferences. Each PJ would be free to establish tenant selection criteria based solely on the needs identified in its Consolidated Plan.

IV. ELIGIBLE ACTIVITIES

A. Eligible Uses

HOME TBRA can be used to undertake one or a combination of the following activities:

Free-standing rental assistance. A PJ may administer a rental assistance program to assist low- and very low-income families. These freestanding programs are similar to the Section 8 certificate and voucher programs in that tenants choose their housing within guidelines established by the PJ.

Special purpose programs. Within limitations described in Section VII, E of this notice, PJs can use TBRA to support a variety of local goals including self-sufficiency and homeownership initiatives and assistance to special populations.

- ◆ ***Self-sufficiency programs.*** PJs may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of assistance. However, such conditions may not be placed on tenants living in a HOME-assisted project who receive TBRA as relocation assistance.
- ◆ ***Homebuyer programs.*** HOME TBRA may assist a tenant, who has been identified as a potential low-income homebuyer through a lease-purchase agreement, with monthly rental payments for a period up to 36 months.¹ While the HOME TBRA payment cannot be used to create equity, all or a portion of the homebuyer's monthly contribution toward housing expenses may be set aside for this purpose. If a PJ determines that a tenant has met the lease-purchase criteria and is ready to assume ownership, HOME funds may be provided for downpayment assistance.
- ◆ ***Targeted Populations.*** PJs may establish local preferences for special needs groups in a broad, community-wide TBRA program or may design a program that exclusively serves one or more special needs groups.

Anti-displacement assistance. TBRA can be used to minimize displacement associated with HOME-funded activities. TBRA can be provided to income-eligible tenants who live in units that will be acquired, demolished or rehabilitated with HOME funds. Existing tenants in HOME-assisted projects who receive TBRA may remain in the project or move

¹ HOME TBRA may not exceed 24 months but may be renewed at the PJ's discretion.

to another suitable unit. These tenants may be assisted with TBRA regardless of whether the PJ administers a broader TBRA program and are not required to meet written tenant selection policies and criteria.²

Security and utility deposit assistance. PJs may provide security deposit assistance to tenants regardless of whether the PJ is providing ongoing tenant-based rental assistance. Utility deposit assistance may be provided only in conjunction with a TBRA program or a security deposit program.

B. Ineligible Uses

HOME TBRA funds cannot be used for the following:

- ◆ to assist resident owners of cooperative housing that qualifies as homeownership housing (cooperative and mutual housing may qualify as either rental or owner-occupied housing under the HOME Program, depending upon the provisions of the agreement applying to the unit). TBRA may, however, be used by a tenant who is renting from a cooperative unit owner;
- ◆ to prevent the displacement of tenants from projects assisted with Rental Rehabilitation Program funds under 24 CFR 511. (See 24 CFR 92.214);
- ◆ to provide TBRA vouchers to homeless persons for overnight or temporary shelter. The HOME TBRA subsidy must be sufficient to enable the homeless person to rent a transitional or permanent housing unit that meets Housing Quality Standards (HQS).

V. PROGRAM ADMINISTRATION

Certification - To establish a TBRA program, a PJ must certify in its Consolidated Plan that TBRA is an essential part of its approved housing strategy and that market conditions in the locality make TBRA a viable option. This means that an assessment of market factors has been undertaken and, because there is an ample supply of housing, a TBRA program is an effective way to expand affordable housing opportunities in the community.

Program Operation - A PJ may administer its TBRA program or contract administrative functions out to another entity, such as a local public housing agency (PHA), another public or private agency, or a nonprofit organization. In deciding whether to administer its program or

² The 1992 HCDA amendments require the PJ to certify in its Consolidated Plan that it has a Residential Anti-displacement and Relocation Plan for the HOME Program equivalent to the Plan required for the Community Development Block Grant (CDBG) Program.

contract out, the PJ should consider its TBRA program design. If its TBRA program will be modeled after the Section 8 certificate or voucher programs or uses the Section 8 waiting list, it may be administratively simpler to contract with the PHA. Alternately, if the program will use an independent waiting list or target special populations, it may be preferable for the PJ or another entity to administer the TBRA program.

A PJ that is an urban county or consortium may establish a TBRA program that is limited to a single or multiple jurisdictions, but does not encompass the entire PJ. For instance, one local government participating in a consortium may administer a TBRA program in its jurisdiction.

It should be noted that the provision of TBRA is not an eligible Community Housing Development Organization (CHDO) set-aside activity. If a PJ selects a CHDO to administer its TBRA program, the CHDO is acting as a subrecipient and general HOME program funds (not CHDO set-aside funds) must be used.

Administrative Costs - HOME funds may be used to pay for reasonable planning and administrative expenses associated with operating a TBRA program, regardless of what entity operates the program. Such expenses are limited by the ten percent cap on administrative costs. TBRA administrative costs are not considered "project soft costs" under 24 CFR 92.206(b).

Match - As with all HOME activities, TBRA program expenditures require a 25% local match. A PJ may count non-Federal funds that it contributes to its HOME TBRA program as a matching contribution. It may also count as match any funds it contributes to a TBRA program which does not use HOME funds but meets the HOME Program requirements (see 24 CFR 92.219(b)(1)). HOME funds expended for TBRA may be matched with funds from any eligible match source, not just TBRA-related contributions. Payment of costs associated with administration of a TBRA program does not count as match.

TBRA Project Set-Up - To access funds, information concerning the project must first be provided through the HOME Cash and Management Information System (C/MI), or the Integrated Data and Information System (IDIS), which is replacing the C/MI. Until a PJ has been converted to IDIS, all TBRA projects set up through the C/MI system should be reported on Form HUD-40095. Each TBRA project may include several hundred individual households. Once a TBRA project has been set up, the PJ may add families to the project for up to 6 months. The TBRA set-up form requires each tenant's Social Security number and certain demographic information.

The set-up of TBRA projects in IDIS is similar to the set-up in the HOME C/MI. However, there is neither a limitation on the number of households that can be included in a single project (referred to as an activity in IDIS) nor a time limit for adding families to the project.

Drawing Down Funds - As with all HOME funds, TBRA funds drawn from the U.S. Treasury must be expended within 15 days. Thus, draws may not be made for TBRA on a quarterly basis.

VI. TENANT SELECTION

A. Income Eligibility/Verification

HOME funds can only be used to assist low-income families with incomes at or below 80% of area median income as determined by HUD. In addition, for each fiscal year's HOME allocation, 90% of the families assisted with HOME funds for TBRA and other rental activities must have incomes which are at or below 60% of area median income (see 24 CFR 92.216).

The PJ must determine the income and eligibility of all proposed beneficiaries before the TBRA contract is signed. The HOME final rule, which was published on September 16, 1996, amended the income definition to permit PJs to choose from among three definitions of income (the Section 8 definition, the U.S. Census long form definition, and the IRS definition of adjusted gross income). A PJ that chooses the Section 8 definition of income for its TBRA program should follow the procedures outlined in the *Technical Guide for Determining Income and Allowances for the HOME Program*, which HUD issued in May, 1994. In addition, PJs should note that a rule published on April 5, 1996 added nine exclusions to the definition of income applicable to HOME TBRA programs. That definition was subsequently moved to 24 CFR 5.609 by a regulation published on October 18, 1996. (See the Appendix to this notice for a list of the nine additional exclusions). PJs opting for the IRS or Census definitions must adhere to the instructions developed by those agencies for calculating income.

In accordance with the Section 8 program rule at 24 CFR 982.352(c)(6), Section 8 rental assistance voucher and certificate holders cannot also receive TBRA under the HOME Program because the two programs would provide duplicative subsidies. HOME TBRA recipients who are offered a Section 8 voucher or certificate must relinquish HOME assistance, if they wish to accept the Section 8 assistance. Similarly, a family currently receiving Section 8 rental assistance may not accept HOME TBRA without relinquishing the Section 8 assistance. However, a Section 8 rental assistance recipient may receive HOME-funded security deposit and utility deposit assistance.

Similarly, a family cannot receive HOME TBRA if they are receiving rental assistance under another Federal program (e.g., Section 521 of the Housing Act of 1949 provided through the Rural Housing Service) or a State or local rental assistance program, if the HOME subsidy would result in duplicative subsidies to the family. [NOTE: Some State and local rental assistance programs do not provide assistance in amounts sufficient to lower a tenant's rental payment to 30 percent of income. In such cases, HOME TBRA could be provided as supplemental assistance to further reduce the tenant's rent payment to 30 percent of income.] In addition, HOME TBRA should not be provided to a family who proposes to rent a unit that receives project-based rental assistance through Federal, State or local programs, if the HOME assistance would provide a duplicative subsidy.

Income and eligibility determinations for a newly-participating tenant remain valid for up to six months. Income eligibility criteria must be met, regardless of the type of TBRA program the PJ will administer (i.e., anti-displacement, security deposit, or freestanding). Special needs populations are not presumed to be low-income.

The PJ (or TBRA administrator) must reexamine family income, size, and composition at least annually. The family's contribution toward rent may need to be adjusted as a result of the annual income reexamination. Although not required by the HOME regulations, the PJ may require families to report changes in income that occur between annual income examinations.

Because HOME funds may only be used to assist families with incomes at or below 80% of area median income, assistance to tenants whose incomes rise above 80% of area median income **must be terminated** after the PJ gives reasonable notice to tenant and owner. Since the PJ normally would make any required payment adjustment or contract termination at the end of the rental lease period, it should time the income recertification process so that tenants whose assistance will be terminated or whose required contributions toward rent will be increased can be given reasonable notice of the change. In determining what period constitutes reasonable notice, the PJ should consult both State law and common practice in the area.

B. Tenant Selection Criteria

Scenario 1: Under the Federal Preference Suspension

The HOME Program rule requires that PJs select tenants in accordance with written tenant selection policies and criteria. These policies and criteria must be consistent with the purpose of providing housing to very low- and low-income families. Under the temporary suspension of the Federal preferences in effect until September 30, 1997, PJs may establish their own preference systems for selecting families for rental assistance. The locally-established preference system must be consistent with the priorities established in the Consolidated Plan.

The Federal preference suspension applies to PHAs administering Section 8 rental assistance, as well as to PJs administering HOME TBRA. A PHA and a PJ administering rental assistance in the same jurisdiction are not required to use the same preference system. However, HUD encourages entities providing assistance to families within the same jurisdiction to coordinate their efforts to the greatest extent possible.

Scenario 2: Elimination of the Housing Act of 1937

Should Congress rescind the Housing Act of 1937, there would no longer be any Federal preferences for admission to public housing and Section 8 assistance. Consequently, PJs would no longer be required to establish preferences for their TBRA programs that are reasonably related to the Federal preferences. Each PJ administering a TBRA program would establish a written tenant selection system consistent with the needs identified in its Consolidated Plan

Scenario 3: Federal Preference Requirements In Effect (suspended through 9/30/97)

PJs that operate TBRA programs must select tenants in accordance with written tenant selection policies and criteria. The policies and criteria must be consistent with the purpose of providing housing to very low- and low-income families and be reasonably related to preference rules established under section 6(c)(4)(A) of the U.S. Housing Act of 1937.

The term "reasonably related to Federal preference rules" means that at least 50% of the families assisted must qualify for one of the three Federal preferences. Those Federal preferences are:

- ◆ families living in substandard housing, including families that are homeless or living in a shelter for homeless families;
- ◆ families paying more than 50% of family income (gross) for rent; or
- ◆ families involuntarily displaced at the time they are seeking TBRA assistance.

PJs may rank the Federal preferences to serve those families they deem most in need. For instance, a PJ may give preference to families who are involuntarily displaced over those living in substandard housing. In addition, the PJ may rank the definitional elements of each Federal preference to reflect its own priorities.

Section 6(c)(4)(A) of the Housing Act of 1937 requires that PHA's prohibit any individual or family evicted from public housing or assisted under Section 8 because of drug-related criminal activity from having a preference for three years, unless the evicted tenant successfully completes a rehabilitation program approved by the agency. Each PJ should determine whether this or a similar policy is appropriate for its HOME TBRA program.

The PJ may establish local preferences for assisting the 50% of families who are not required to qualify for a Federal preference. Local preferences must be established in writing and respond to local housing needs and priorities.

Examples of local preferences that might be provided include preferences for families who:

- ◆ have veteran's status;
- ◆ lack adequate housing and whose children eventually may be proposed for placement in foster care as a result. (These families are usually identified by local agencies that are involved in providing for children's welfare);
- ◆ are members of special needs populations, such as battered spouses, persons with AIDS, senior citizens or those with disabilities.

In establishing local preferences, PJs must consider how specific preferences will impact fair housing efforts in its community. The local preferences must not result in discrimination against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. In monitoring a PJ's fair housing efforts, HUD's Office of Fair Housing and Equal Opportunity will consider both the intent and the effect of local preference rules.

C. Waiting Lists

To implement its tenant selection policies for an ongoing TBRA program in a fair and orderly manner, a PJ must use a waiting list for families applying for TBRA. The PJ may choose to use a Section 8 waiting list that covers the jurisdiction or may establish a separate waiting list for HOME TBRA applicants. In determining which list to use, the PJ will need to consider the following factors:

- ◆ ***The preferences established by the PHA and how those preferences compare with the PJ's priorities for assistance.*** If the PHA has adopted its own preferences as permitted under the temporary suspension of Federal preferences, the PJ should examine those preferences. If the suspension is terminated or the PHA has chosen not to establish its own preference system, the PJ should examine both the local preferences established by the PHA and the manner in which it prioritizes the Federal preferences. If the PHA's preference system will not result in assistance being provided to the subpopulations that the PJ deems most in need, the PJ should consider establishing a separate HOME TBRA waiting list.
- ◆ ***The length of the PHA's Section 8 waiting list and the turnover rate of vouchers and certificates.*** In communities where the existing Section 8 waiting list is very long and the unavailability of new or turnover resources results in long periods on the waiting list, a PJ's priority may be to provide interim assistance to families who are currently on the Section 8 waiting list. In these instances, the PJ will adopt the Section 8 waiting list and use HOME TBRA to supplement the existing Section 8 program.
- ◆ ***The PJ's preferred program design.*** If the PJ wishes to administer a TBRA program that closely resembles the Section 8 voucher or certificate program and finds the PHA's preference system acceptable, it may wish to adopt the Section 8 waiting list (and, perhaps, to contract with the PHA as the administering agent) for simplicity's sake. However, if the PJ wishes to implement a program that is very different from the Section 8 programs, there may be no advantage in adopting the Section 8 waiting list.
- ◆ ***The PJ's capacity and preference with respect to an administering agent.*** If the PJ plans to administer the TBRA program itself or to contract out with a capable nonprofit organization, it will have flexibility with respect to choosing a waiting list for its program. However, if the PJ lacks capacity to administer the program and chooses to contract with

a PHA, it may have little choice but to adopt the PHA waiting list. The PHA may be reluctant to take on the added responsibility of establishing and maintaining a separate waiting list and administering selection criteria that are very different from its existing program.

D. Section 8 Availability

The HOME statute requires that families who receive HOME TBRA and are also on the Section 8 waiting list continue to qualify for Section 8 assistance to the same extent as they did before they received the HOME TBRA. Consequently, when the Federal preferences are in force, the PHA must carefully document how an applicant for HOME assistance who is also on the Section 8 waiting list meets Federal preference requirements at the time HOME assistance is provided to preserve the applicant's qualification to receive future Section 8 assistance. If a Section 8 voucher or certificate becomes available through turnover or additional budget authority and the next eligible family on the Section 8 waiting list is a HOME TBRA recipient, that family must be offered a Section 8 voucher or certificate. The PJ and PHA should develop a procedure for offering Section 8 assistance to HOME TBRA recipients who become eligible for a voucher or certificate at regular intervals (e.g., monthly, quarterly, or less frequently, depending on average turnover of vouchers and certificates).

Under the current suspension of Federal preferences, the PJ should document how the HOME TBRA recipient meets Federal preference requirements and, if the PHA has adopted a local preference system, the local preference requirements. This will permit the PJ to determine a HOME TBRA recipient's initial eligibility for Section 8 under the Federal preference system if the suspension lapses.

Should legislation permanently eliminate the Federal preferences, the HOME Program requirement that HOME TBRA recipients maintain their place and status on the Section 8 waiting list would also be eliminated. However, HOME TBRA is often a temporary resource for a low-income family. Consequently, the PJ should coordinate with the local PHA so that the PHA's policies do not disqualify applicants who come to the top of Section 8 waiting list because they are currently receiving HOME TBRA.

E. Assisting Special Needs Populations

HOME TBRA may be used to assist special needs populations regardless of whether the Federal preference suspension is in effect. This can be done in one of two ways:

- ◆ ***General TBRA Program.*** A PJ administering a community-wide TBRA program may establish a local preference for persons with special needs (e.g., persons with disabilities) or for a specific category of individuals with special needs (e.g., chronically mentally ill individuals). A preference may be provided for persons with a particular type of special need, if the specific category of need is identified in the PJ's consolidated plan as having

unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

In conjunction with the TBRA, the PJ may offer non-mandatory services appropriate for persons with a particular disability. The nature of these services should be identified in consultation with persons with special needs residing in the community. Generally, TBRA and related services should be made available to all persons with disabilities who can benefit from such services.

- ◆ ***TBRA Program for Persons with Special Needs.*** A PJ may establish a TBRA program that exclusively serves individuals with special needs or with a specific category of special needs or disabilities. The PJ may accomplish this simply by limiting eligibility for assistance to special needs groups it wishes to target. If the Federal preference rules are in effect, then 50% of the individuals assisted must qualify or would qualify in the near future for a Federal preference. As with a general TBRA program, the PJ may provide appropriate, non-mandatory social services in conjunction with the TBRA. TBRA may be provided exclusively to persons with a particular type of special need, if the specific category of need is identified in the PJ's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

VII. PROGRAM REQUIREMENTS

A. Rent Requirements

Payment Standards

Each PJ administering a TBRA program must establish a payment standard for units of each available bedroom size. This standard is intended to represent the rent and utility costs of moderately priced units that meet the Section 8 Housing Quality Standards (HQS) in the jurisdiction. It is important that the PJ establish its payment standard carefully. A standard that is set too low in comparison to the market will result in assisted families experiencing difficulty in finding housing. A payment standard that is set too high will result in excessive subsidies and fewer families being assisted.

A PJ may determine its HOME payment standard in one of two ways:

- 1) The PJ may develop a standard based on documented local market conditions.
- 2) To conform more closely to PHA rent standards, the PJ may adhere to the following:
 - ◆ For each unit size, the rent standard may **not be less** than 80% of the published Section 8 Existing Housing fair market rent (FMR) in effect when the PJ adopts its

rent standard amount.

- ◆ For each unit size, the rent standard may **not be more** than the FMR or HUD-approved community-wide exception rent (discussed below) in effect when the PJ adopts its rent standard amount.
- ◆ For not more than 20% of the total number of units assisted in their TBRA program, a PJ may approve, on a unit-by-unit basis, a subsidy based on a rent standard that exceeds the applicable FMR by up to ten percent.

NOTE: The PJ **must** disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

Community-wide Exception Rents

Under certain circumstances, HUD approves maximum gross rents for the Section 8 Certificate Program for units in a designated municipality, county or similar locality that are higher than the FMR (see 24 CFR 882.106(a)(3)). These rents, generally referred to as community-wide exception rents, may equal up to 120% of the FMR applicable to the entire jurisdiction.

The PJ may use HUD-approved exception rents in lieu of the FMR to establish the rent standard for HOME TBRA. HOME does not require that a PJ provide additional rationale for adopting exception rents.

TBRA in HOME-Assisted Units

Rents in HOME-assisted units must meet the requirements of 24 CFR 92.252. When a family that receives HOME TBRA resides in a HOME-assisted unit, the maximum rental assistance subsidy is the difference between the HOME rent and 30% of the family's adjusted monthly income.

PJ and Tenant Rent Contributions

The maximum amount of subsidy the PJ may provide to a family is the difference between 30% of the family's monthly adjusted income and the payment standard established by the PJ for the size of unit the family will occupy. The PJ's contribution toward rent may vary each year because the family moves, the rent on the unit increases or decreases, or the family's income changes.

The PJ also must establish a minimum tenant rent contribution. If the PJ is assisting a tenant with a very low-income, that contribution may be minimal.

If a PJ contracts with a PHA to operate its program, it may wish to adopt the Section 8 housing certificate or voucher program rules. Under the certificate program, families pay a specified percentage of their income for housing, usually 30%, and a limit is set on what the owner can charge for rent. Housing vouchers assume that the family will pay 30% of adjusted income, but do not limit the amount an owner can charge for rent. Vouchers limit only the subsidy amount and, therefore, a family may pay more than 30% of its income for rent. A tenant's contribution to rent may change each year as a result of changes in adjusted family income. HUD generally publishes area median incomes in January.

Rent Increases and Decreases

The owner may adjust the rent levels as leases are renewed. They must be reviewed and approved by the PJ. HUD generally publishes FMRs in late September.

B. Terms of Assistance

Unlike the Section 8 programs which make payments to the landlord, HOME TBRA payments may be made either to the unit owner or the tenant. The term of the rental assistance contract must begin on the first day of the lease. For a rental assistance contract between the PJ and an owner, the term of the contract must end upon termination of the lease. If a PJ makes payments directly to the family, that agreement need not end upon termination of the lease, but no payments may be made after termination of the lease until the family enters into a new lease.

TBRA agreements may not exceed 24 months. However, the PJ, at its discretion, may renew a TBRA agreement.

C. Lease Requirements

The term of the lease between a tenant and the owner must be for not less than one year, unless another term is mutually agreed upon by the tenant and the owner.

The lease may not contain any of the following terms (see 24 CFR 92.253(b)):

- ◆ agreement by the tenant **to be sued**, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- ◆ agreement by the tenant **that the owner may take, hold or sell personal property** of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. In that case, the owner may dispose of this personal property in accordance with state law.
- ◆ agreement by the tenant **not to hold the owner or the owner's agents legally responsible** for any action or the failure to act, whether intentional or negligent.
- ◆ agreement of the tenant **that the owner may institute a lawsuit** without notice to the tenant.
- ◆ agreement by the tenant **that the owner may evict the tenant** or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- ◆ agreement by the tenant **to waive any right to a trial by jury**.
- ◆ agreement by the tenant **to waive the tenant's right to appeal** or to otherwise challenge in court a decision in connection with the lease.

- ◆ agreement by the tenant **to pay attorney fees or other legal costs** even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

D. Termination of Tenancy

The PJ must develop standards outlining when unit owners may terminate tenancy or refuse to renew a lease in its TBRA program. These standards must be established in writing and be included in the lease between the owner and the TBRA recipient and/or, if appropriate, the TBRA agreement between the PJ and tenant. The PJ should address the permissible grounds for termination or tenancy/refusal to renew and establish notification requirements for these actions. Please note that the requirement for 30 days notice for termination of tenancy/refusal to renew in HOME-assisted units does not apply to owners of units occupied by HOME TBRA recipients.

E. Portability

The PJ may require tenants to use their TBRA within the PJ or may establish a portability policy, allowing use of TBRA outside of the jurisdiction. The experience of many PHAs using portable housing vouchers has been that most tenants move to nearby jurisdictions, usually only across city or county lines.

If a PJ permits portability, it must develop procedures to satisfy HOME TBRA requirements at a distance. Unless it limits portability to contiguous jurisdictions, it may be impractical for the PJ to attempt to oversee the program itself. Thus, it may wish to make arrangements with a government agency or PHA in the jurisdiction to which the family is moving to administer the TBRA or to use a subrecipient or contractor to do so. Requirements that the PJ should consider in establishing a portability policy include the need to:

- ◆ initially and annually inspect units occupied by TBRA families;
- ◆ execute necessary documents with the family and the owner; and
- ◆ make monthly rent payments and/or security deposit payments on behalf of the PJ to the owner and/or utility companies.

F. Eligible Units

The PJ must establish occupancy standards that will be used to determine the unit size (i.e., number of bedrooms) that TBRA families of various sizes and composition will be permitted to occupy. The PJ's standards for occupancy must be at least as stringent as those set out in the Section 8 Housing Quality Standards (HQS). At the time that it is approved for TBRA, the family should be counseled regarding the size of the unit for which it is approved, whether it will be permitted to select a unit that is larger or smaller than the approved unit size and what the consequences of such a decision will be with respect to the family's monthly contribution toward rent. The PJ may refer the TBRA family to suitable units. However, the PJ must inform the family that it is not obligated to select a referral unit.

Rental units are selected by the tenant, and:

- ◆ may be owned by the PJ, a PHA or another public entity or be privately owned housing;
- ◆ may include units developed or rehabilitated with HOME assistance;
- ◆ may be transitional housing units, if the lease terms meet the minimum lease requirements;
- ◆ must not be units receiving public or Indian housing assistance, any Section 8 rent subsidies, or any other Federal, State or local subsidy that provides a duplicative subsidy to the HOME TBRA recipient or the unit which they propose to rent; and
- ◆ if part of a cooperative, must be rented from the owner of the cooperative unit. HOME TBRA cannot be used to pay cooperative shares if the cooperative membership is considered ownership under HOME.

In conjunction with the annual reexamination of income, the PJ must reexamine the TBRA family's size and composition to determine whether its circumstances have changed. Depending upon the occupancy requirements established by the PJ, a family whose size or composition has changed may be required to find a unit that is suitable to its current circumstances.

Housing occupied by a family receiving TBRA must meet Section 8 HQS. The housing must meet both the performance and acceptability requirements outlined at 24 CFR 982.401. PJs may request waivers to permit specific variations on HQS. Examples that may justify deviations include local climatic or geological conditions or local codes. The PJ must inspect units selected by families receiving TBRA to determine whether they meet HQS before authorizing their initial rental and, thereafter, must inspect the units annually. The owner must maintain the premises in compliance with all applicable housing quality standards and local code requirements throughout

the period of the TBRA family's occupancy.

G. Self-Sufficiency Programs

PJs administering a freestanding TBRA program may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of assistance. All terms and conditions of participation should be clearly spelled out in the written agreement between the tenant and the PJ.

During the term of the TBRA contract, the PJ may not withdraw rental assistance based on the tenant's failure to continue participation in the program without providing proper notice in accordance with the standards the PJ established in the TBRA agreement. Because it may prove administratively simpler, PJs considering conditioning rental assistance on participation in such programs may wish to limit the term of assistance to a short period of time (e.g., 6 or 12 months) rather than attempting to terminate assistance for noncompliance during the contract term. In such instances, TBRA participants should be assured that the assistance will be renewed if the conditions established by the PJ are met.

H. Making the Payments

Unlike the Section 8 program, which requires that subsidy payments be made directly to the owner, a PJ using HOME TBRA funds may provide monthly payments to the tenant directly or to the owner on behalf of the tenant.

Paying tenants directly may eliminate paperwork and save staff time because no contract between the PJ and owner is necessary. The PJ must, however, examine the lease to make certain it does not contain prohibited lease terms and inspect the unit. A "real-world" tenant-owner market relationship, in which tenants pay owners, results. If the PJ makes payments directly to tenants, the contract should include provisions to recoup HOME funds for nonpayment of rent.

If the PJ decides to pay owners directly, the PJ has the advantage of negotiating the rent. Also, paying the owner directly may encourage private owners to participate because they will receive at least a partial rent payment from the PJ each month. If a PHA administers the program for the PJ, this procedure may be preferable because Section 8 payments are made only to owners. Consequently, the HOME TBRA payments can be easily integrated into the PHA's financial management system, resulting in lower front-end and processing costs.

The PJ also may choose to reimburse tenants for rent paid to the owner. However, this may not be practical because families may not have the money up-front to make their entire rent payment.

I. Utility Deposits

The PJ may pay utility deposits for tenants who are also participating in a TBRA program or a

security deposit program. Deposits may be made for utilities authorized under the Section 8 utility allowance (such as electric, gas, water and trash). Deposits for services incidental to housing, such as telephone service and cable television, cannot be paid with HOME funds.

The PJ may make the utility deposit available to the family as a loan or grant or may make payment directly to the utility company. If offered as a grant, the tenant may keep any remaining funds when the family departs from the unit. If offered as a loan, the PJ must make arrangements with the tenant or utility company to return any remaining funds to it. Returned funds are treated as program income and must be reinvested in other HOME-eligible activities (see 24 CFR 92.503(b)). In determining whether to grant or loan these funds, the PJ should consider the time and effort involved in collecting any remaining funds from the tenant or utility company.

VIII. SECURITY DEPOSIT PROGRAM

TBRA may be used for security deposits, regardless of whether the tenant is receiving ongoing rental assistance. For a security deposit program:

- ◆ the relevant state or local definition of "security deposit" in the jurisdiction where the unit is located applies.
- ◆ the maximum amount of HOME funds that may be provided for a security deposit is the equivalent of two months rent for the unit.
- ◆ only the prospective tenant, not the unit owner, may apply for HOME security deposit assistance.
- ◆ all of the above TBRA requirements apply except for the term of assistance and maximum subsidy amount.
- ◆ the lease associated with the security deposit may not contain the prohibited lease provisions outlined in Section VII, C, of this notice and must be in effect for at least one year unless there is mutual agreement between landlord and tenant.
- ◆ payment may be made to the tenant or the landlord.

The PJ may provide security deposits as either a grant or a loan. If offered as a grant, the tenant may keep any remaining funds when the family leaves the unit. If the PJ lends the funds, it must arrange for the tenant or owner to return the funds. If the unit owner subtracts funds from the security deposit to cover damages, the PJ may accept the remaining balance as repayment or require the tenant to repay the entire amount. This requirement should be set out in the written agreement between the PJ and the tenant. In determining whether to grant or loan these funds, the PJ should consider the time and effort involved in collecting any remaining security deposit

funds from the tenant or owner after the tenant leaves the unit. Returned security deposit funds are treated as program income and must be reinvested in HOME-eligible activities (see 24 CFR 92.503(b)).

APPENDIX: Exclusions from Income Under Section 8 Income Definition

Annual income does not include the following:

- 1) Resident service stipends of less than \$200 per month (e.g., fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and resident management).
- 2) Adoption assistance payments.
- 3) The full amount of student financial assistance paid directly to the student or to the educational institution.
- 4) Earned income of full-time students age 18 years or older.
- 5) Payments received for the care of foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
- 6) State or local employment training programs and training of resident management staff.
- 7) State tax rent credits and rebates for property taxes paid on a dwelling unit.
- 8) Homecare payments made by a State agency to families that have developmentally disabled children or adult family members living at home.
- 9) Deferred periodic payments of Social Security Supplemental Income payments and Social Security payments received in a lump sum.

Source: 24 CFR 5.609(c).